

## **EXHIBIT “C”**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:  
USA COMMERCIAL MORTGAGE COMPANY,  
  
Debtor.

Case Nos.:  
BK-S-06-10725-LBR  
BK-S-06-10726-LBR  
BK-S-06-10727-LBR  
BK-S-06-10728-LBR  
BK-S-06-10729-LBR

In re:  
USA CAPITAL REALTY ADVISORS, LLC,  
  
Debtor.

In re:  
USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
LLC,  
  
Debtor.

JOINTLY ADMINISTERED  
Chapter 11 Cases

Judge Linda B. Riegler

In re:  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
  
Debtor.

In re:  
USA SECURITIES, LLC,  
  
Debtor.

**AMENDED STIPULATED  
PROTECTIVE ORDER**

Affects:  
☒ All Debtors  
☐ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

1 This Amended Stipulated Protective Order (the “Amended Protective Order”) is made  
 2 upon the stipulation of counsel for the USACM Liquidating Trust, Post-Effective Date USA  
 3 Capital Diversified Trust Deed Fund, USA Investment Partners, LLC, Ford Elsaesser as  
 4 interim chapter 11 trustee for Joseph D. Milanowski, and Michael Carmel as chapter 11  
 5 trustee for Thomas A. Hantges (collectively, the “Parties”).

7 WHEREAS, on April 13, 2006, USA Commercial Mortgage Company (“USCM”),  
 8 USA Capital Realty Advisors, LLC, USA Capital Diversified Trust Deed Fund, LLC, USA  
 9 Capital First Trust Deed Fund, LLC, and USA Securities, LLC (collectively, the “Debtors”)  
 10 filed voluntary petitions for reorganization under chapter 11 of title 11 of the United States  
 11 Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of  
 12 Nevada, (the “Bankruptcy Court”), Case No. BK-S-06-10725-LBR (the “USACM Chapter 11  
 13 Cases”);

15 WHEREAS, on January 8, 2007, the Bankruptcy Court entered an order confirming  
 16 the Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization (the “USACM Plan”);

17 WHEREAS, on January 31, 2007, the Court entered an order (the “Stipulated  
 18 Protective Order”) [Docket No. 2624] approving a stipulation between counsel for the  
 19 Debtors, the Official Committee of Unsecured Creditors for USA Commercial Mortgage  
 20 Company, the Official Committee of Equity Security Holders of USA Capital Diversified  
 21 Trust Deed Fund, LLC, acting on their own behalf and on behalf of the Post-Effective Date  
 22 Entities for their estates and the USACM Trust Committee and DTDF Post-Effective Date  
 23 Committee, respectively<sup>1</sup>; USA Investment Partners, LLC (“USAIP”), and Joseph D.

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<sup>1</sup> Unless otherwise defined, capitalized terms used herein shall be given the meaning ascribed to such terms pursuant to the Plan.

1 Milanowski (“Milanowski”) acting on his own behalf and all other non-Debtor insiders  
2 including, but not limited to, Thomas A. Hantges (“Hantges”);

3 WHEREAS, pursuant to the Plan, on March 12, 2007, the USACM Liquidating Trust  
4 (the “USACM Trust”) succeeded to certain assets, claims, and other rights previously held by  
5 USACM;  
6

7 WHEREAS, pursuant to the Plan, on March 12, 2007, Post-Effective Date USA  
8 Capital Diversified Trust Deed Fund, LLC (“Diversified”) was revested with certain assets,  
9 claims, and other rights previously held by Pre-Effective Date USA Capital Diversified Trust  
10 Deed Fund, LLC;

11 WHEREAS, on April 4, 2007, USAIP was placed into an involuntary chapter 11 case  
12 in the Bankruptcy Court, Case No. BK-S-07-11821-LBR (the “USAIP Chapter 11 Case”);  
13

14 WHEREAS, on April 6, 2007, the Bankruptcy Court entered an order confirming the  
15 appointment of Lisa Poulin as interim chapter 11 trustee for the USAIP chapter 11 estate (the  
16 “USAIP Trustee”);

17 WHEREAS, on May 9, 2007, the Bankruptcy Court entered an order for relief in the  
18 USAIP Chapter 11 Case;

19 WHEREAS, on or about May 29, 2007, Milanowski was placed into an involuntary  
20 chapter 11 case in the Bankruptcy Court, Case No. BK-S-07-13162-LBR (the “Milanowski  
21 Chapter 11 Case”);  
22

23 WHEREAS, on or about May 29, 2007, Hantges was placed into an involuntary  
24 chapter 11 case in the Bankruptcy Court, Case No. BK-S-07-13163-LBR (the “Hantges  
25 Chapter 11 Case”);  
26

WHEREAS, on June 8, 2007, the Bankruptcy Court entered an order directing the  
U.S. Trustee to appoint an interim chapter 11 trustee in the Milanowski Chapter 11 Case;

1 WHEREAS, on June 8, 2007, the U.S. Trustee appointed Ford Elsaesser as interim  
2 trustee in the Milanowski Chapter 11 Case (the "Milanowski Trustee");

3 WHEREAS, on June 8, 2007, the Bankruptcy Court entered an order directing the  
4 U.S. Trustee to appoint an interim chapter 11 trustee in the Hantges Chapter 11 Case;

5 WHEREAS, on June 8, 2007, the U.S. Trustee appointed Michael W. Carmel as  
6 interim trustee in the Hantges Chapter 11 Case (the "Hantges Trustee");

7 WHEREAS, on June 22, 2007, the Bankruptcy Court entered an order for relief in the  
8 Hantges Chapter 11 Case, and the Hantges Trustee continues to serve as the trustee in the  
9 Hantges Chapter 11 Case.

10 WHEREAS, on August 13, 2007, the Bankruptcy Court entered an order for relief in  
11 the Milanowski Chapter 11 Case, and the Milanowski Trustee continues to serve as the trustee  
12 in the Milanowski Chapter 11 Case.

13 WHEREAS, paragraph 27 of the Stipulated Protective Order states that it may be  
14 amended as necessary or appropriate, and paragraph 28 of the Stipulated Protective Order  
15 states that it will be binding upon the successors of each of the parties thereto, including the  
16 Debtors' successors as provided in the Plan, and further provides that each such successor  
17 shall have all of the rights and obligations of a party to the Stipulated Protective Order;

18 WHEREAS, from March 21, 2007 through March 23, 2007, the parties to the  
19 Stipulated Protective Order conducted an initial review of hard copy documents subject to  
20 that order, and the documents initially designated by the IP Parties (as defined in the  
21 Stipulated Protective Order) as "privileged" or "confidential" during that review were  
22 segregated from the remaining documents for deliberation by the taint team and are currently  
23 maintained in six boxes pursuant to the Stipulated Protective Order (collectively, the "Taint  
24 Boxes"), with taint team members having compact discs prepared by a third party vendor that

1 scanned, imaged, and labeled with a bates number every document contained in the Taint  
2 Boxes (collectively, the “Imaged Taint Documents”);

3 WHEREAS, for various reasons, the parties to the Stipulated Protective Order have  
4 been unable to complete the review and production of the electronic documents, including e-  
5 mails, that are subject to the terms of the Stipulated Protective Order;

6  
7 WHEREAS, as successors-in-interest to the parties to the Stipulated Protective Order,  
8 the Parties have jointly and individually concluded that the procedures set forth in the  
9 Stipulated Protective Order concerning the review and production of Documents (as such  
10 term is defined in the Stipulated Protective Order) should be replaced by the procedures set  
11 forth in this Amended Protective Order, thereby providing shared access to Documents and  
12 other writings within the scope of the Stipulated Protective Order, and providing the  
13 individual debtors Hantges and Milanowski with a procedure to individually assert privileges  
14 with respect to such Documents and writings;

15  
16 NOW THEREFORE, based upon the foregoing recitals, the Parties and their  
17 respective counsel agree to amend and replace paragraphs 3, 4, 5, 6, 7, 10, 11, 24, 25, and 30  
18 of the Stipulated Protective Order as follows:

19 PRIVILEGE REVIEW OF TAINT BOXES

20  
21 1. The USACM Trust’s taint team member shall provide copies of the compact  
22 discs containing the Imaged Taint Documents to Hantges and Milanowski (collectively, the  
23 “Insiders”) through their counsel.

24 2. On or before the expiration of ten (10) days following delivery of the discs  
25 containing the Imaged Taint Documents to the Insiders as required by paragraph 1 hereof (the  
26 “Taint Documents Privilege Log Deadline”), an Insider claiming a privilege with respect to  
any Imaged Taint Document shall deliver to each Party a log setting forth the following

1 information with respect to each such document as to which a privilege is asserted (a “Taint  
 2 Documents Privilege Log”): (a) the bates number(s) of the document; (b) the type of  
 3 document; (c) general subject-matter of the document; (d) the date of the document; (e) the  
 4 letterhead, if any, on the document; (f) the name of the person or entity asserting the  
 5 privilege; (g) the name and title of the author(s) of the document; (h) the name and title of the  
 6 recipient(s) of the document; and (i) the nature of the privilege(s) being asserted.

8 3. The Insiders shall not make any copies of such discs or of the Imaged Taint  
 9 Documents contained therein in any form whatsoever. On or before the Taint Documents  
 10 Privilege Log Deadline, the Insiders shall return the discs to the IP Parties’ taint team  
 11 participant along with the IP Parties’ copy of the discs. Acceptance by the Insiders of the  
 12 Imaged Taint Documents shall bind the Insiders to this obligation.

14 4. All taint team members shall destroy all copies of any Imaged Taint  
 15 Documents and any discs containing any Imaged Taint Documents within ten (10) days after  
 16 the Taint Documents Privilege Log Deadline.

#### 17 ACCESS TO TAINT DOCUMENTS

18 5. Upon receipt of a Taint Documents Privilege Log complying with paragraph 2  
 19 hereof, the USACM Trust shall direct the third party vendor that scanned, imaged, and  
 20 labeled the Imaged Taint Documents to (1) segregate all Imaged Taint Documents identified  
 21 on the Taint Documents Privilege Log(s) (the “Allegedly Privileged Taint Documents”) from  
 22 the remaining Imaged Taint Documents, and (2) provide the Parties with discs containing  
 23 Imaged Taint Documents in accordance with the following:

- 25 (a) If and only if Hantges submits a Taint Documents Privilege Log in  
 26 accordance with the foregoing provisions, then Hantges shall receive  
 discs containing (i) all Imaged Taint Documents identified on that

1 Taint Documents Privilege Log, and (ii) all other Imaged Taint  
2 Documents not identified on any Taint Documents Privilege Log  
3 submitted by Milanowski.

4 (b) If and only if Milanowski submits a Taint Documents Privilege Log in  
5 accordance with the foregoing provisions, then Milanowski shall  
6 receive discs containing (i) all Imaged Taint Documents identified on  
7 that Taint Documents Privilege Log, and (ii) all other Imaged Taint  
8 Documents not identified on any Taint Documents Privilege Log  
9 submitted by Hantges.

10 (c) The Parties shall receive discs containing all Imaged Taint Documents,  
11 except the Allegedly Privileged Taint Documents.  
12

13  
14 6. Commencing on the day following the Taint Documents Privilege Log  
15 Deadline, the Parties shall be allowed to access, review, print, or copy all Imaged Taint  
16 Documents with the exception of the Allegedly Privileged Taint Documents. The Parties  
17 shall not be allowed to access, review, print, or copy the Allegedly Privileged Taint  
18 Documents, except pursuant to the provisions of paragraph 20 hereof.

19 7. If the Insiders fail to provide a Taint Documents Privilege Log on or before the  
20 Taint Documents Privilege Log Deadline, any and all privileges held by the Insiders shall be  
21 waived as to the Imaged Taint Documents.  
22

### 23 IMAGING OF ELECTRONIC DOCUMENTS

24 8. The USACM Trust shall hire and direct forensic computer technicians  
25 (collectively, the “Computer Technicians”) to identify and image certain electronic  
26 documents from each of the Debtors’ electronic data sources that existed as of the petition  
date in the USACM Chapter 11 Cases, including, but not limited to, (a) all e-mails and other



1 documents extracted from Hantges' and Milanowski's files and folders on the USACM  
2 Exchange Servers and the hard drives of the computers used by Hantges and Milanowski  
3 during their employment by the Debtors or their affiliates (collectively, the "Extracted  
4 Documents"); and (b) e-mails and other documents extracted from other USACM employees'  
5 files and folders on the USACM Exchange Servers and the hard drives of the computers used  
6 by other USACM employees (collectively, the "Third Party Extracted Documents"). The  
7 USACM Trust shall be under no obligation to image the entire universe of USACM's  
8 electronic documents.  
9

10 9. The fees and expenses incurred by the Computer Technicians in connection  
11 with the above-referenced project shall be shared equally (or as otherwise agreed) among the  
12 Parties.  
13

14 10. The identification and imaging of Extracted Documents pursuant to the terms  
15 of this Amended Protective Order shall not cause, and shall not give a right to anyone to  
16 claim, a waiver of any privilege with respect to such Extracted Documents. It is the express  
17 intention of the Parties to preserve and protect any and all privileges that may be applicable to  
18 the Extracted Documents pursuant to the terms of this Amended Protective Order.  
19

#### 20 PRIVILEGE REVIEW OF EXTRACTED DOCUMENTS

21 11. At any time following entry of this Amended Protective Order, the Insiders  
22 may notify the USACM Trust of the Search Terms (as defined below) to be used to locate  
23 Extracted Documents as to which the Insiders contend they may hold a privilege (collectively,  
24 the "Potentially Privileged Extracted Documents").

25 12. In the event the USACM Trust receives a written notice of Search Terms from  
26 one or both of the Insiders with an agreement to pay for the cost of the Search Term  
procedures in paragraphs 12-14 hereof (a "Search Term Notice"), the USACM Trust shall

1 direct the Computer Technicians: (a) to employ such Search Terms to search those Extracted  
2 Documents that are identified and imaged (i) as of the Extracted Documents Review Date (as  
3 defined below), or (ii) after the date such Search Term Notice is actually received by the  
4 USACM Trust, whichever is later, to locate Potentially Privileged Extracted Documents; and  
5 (b) to deliver a copy of all so-identified Potentially Privileged Extracted Documents directly  
6 to Hantges or Milanowski, according to the Search Terms provided by each such Insider.  
7

8 13. For the purposes of this Amended Protective Order, the term “Search Terms”  
9 shall mean and refer to all keywords that an Insider desires the Computer Technicians to  
10 employ in running queries on the Extracted Documents in a good faith effort to identify  
11 Potentially Privileged Extracted Documents, provided, however, that Search Terms shall (a)  
12 in each instance include at least one lawyer or law firm in conjunction with any other  
13 keywords, and (b) not include references to lawyers or law firms that performed legal services  
14 for USACM or USAIP, any entity affiliated with USACM or USAIP (collectively, “Joint  
15 Counsel”), unless the Insider seeking to include references to such Joint Counsel in the Search  
16 Terms delivers to the USACM Trust a sworn affidavit or declaration from such Joint Counsel  
17 stating that such Joint Counsel agreed to represent and did represent such Insider in his  
18 personal capacity.  
19

20 14. On or before the expiration of ten (10) days following receipt by an Insider of  
21 Potentially Privileged Extracted Documents pursuant to paragraph 12 hereof (the “Extracted  
22 Documents Privilege Log Deadline”), such Insider shall deliver to each Party hereto a log  
23 setting forth the following information with respect to each Potentially Privileged Extracted  
24 Document as to which such Insider asserts a privilege: (a) type of document; (b) general  
25 subject-matter of the document; (c) the date of the document; (d) the letterhead, if any, on  
26 which the document is printed; (e) the name of the person or entity asserting the privilege; (f)

the name and title of the author(s) of the document; (g) the name and title of the recipient(s) of the document; and (h) the nature of the privilege(s) being asserted (a “Extracted Documents Privilege Log”). Upon receipt of an Extracted Documents Privilege Log complying with this provision, the USACM Trust shall direct the Computer Technicians to segregate all Potentially Privileged Extracted Documents identified on such Extracted Documents Privilege Log (collectively, the “Allegedly Privileged Extracted Documents”).

#### ACCESS TO EXTRACTED DOCUMENTS

15. Commencing on the date that is ten (10) days following entry of this Amended Protective Order by the Bankruptcy Court (the “Extracted Documents Review Date”), the Parties shall be allowed to access, review, print, or copy all Extracted Documents that are not identified as Potentially Privileged Extracted Documents pursuant to the provisions of this Amended Protective Order. Commencing upon expiration of the Extracted Documents Privilege Log Deadline, the Parties shall be allowed to access, review, print, or copy all Potentially Privileged Extracted Documents that are not designated as Allegedly Privileged Extracted Documents pursuant to paragraph 14 hereof. The Parties shall not be allowed to access, review, print, or copy Allegedly Privileged Extracted Documents, except pursuant to the provisions of paragraph 21 hereof.

16. If the Insiders fail to provide an Extracted Documents Privilege Log on or before the Extracted Documents Privilege Log Deadline, any and all privileges held by the Insiders shall be waived as to the Potentially Privileged Extracted Documents.

#### ACCESS TO THIRD PARTY EXTRACTED DOCUMENTS

17. At any time following the entry of this Amended Protective Order, the Parties shall be allowed to access, review, print, and/or copy all Third Party Extracted Documents in accordance with the provisions of this Amended Protective Order.

1 MISCELLANEOUS PROVISIONS

2 18. This Amended Protective Order is entered into in accordance with Federal  
3 Rules of Bankruptcy Procedure 7026 and 9018 in order to provide for the protection of  
4 privileged and confidential information.

5 19. Any notice, request, demand, instruction, or other communication to be given  
6 pursuant to this Amended Protective Order shall be in writing and may be delivered either by  
7 facsimile transmission, hand delivery, or United States First Class certified mail, return  
8 receipt requested, to the Parties and persons listed below. If notice is mailed pursuant to the  
9 terms of this provision, such notice shall be deemed to have been delivered, whether actually  
10 received or not, upon deposit in a regularly maintained official depository of the United States  
11 Postal Service located in the continental United States:  
12

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20. The terms and conditions of the Stipulated Protective Order shall remain in place and force following entry of this Amended Protective Order by the Bankruptcy Court, provided, however, that paragraphs 3, 4, 5, 6, 7, 10, 11, 24, 25, and 30 of the Stipulated Protective Order are expunged and replaced by the terms of this Amended Protective Order.

21. Nothing contained herein shall be deemed to be a determination of the existence or waiver of any privilege with respect to the Documents or other writings addressed in this Amended Protective Order including, but not limited to, the Extracted Documents and the Taint Documents. Any Party hereto may challenge the propriety of the designation of any Extracted Document as an Allegedly Privileged Extracted Document, or Taint Document as an Allegedly Privileged Taint Document, by filing an application with the Bankruptcy Court seeking an *in camera* review of such challenged documents. The Insider asserting a privilege with respect to such challenged documents shall then have ten (10) days to either remove the designation or to oppose the application, which opposition shall include

1 providing a legible copy of such challenged documents to the Bankruptcy Court for its use in  
2 conducting the *in camera* review. Nothing herein precludes the Bankruptcy Court from  
3 appointing a special master to conduct the *in camera* review. Agreement by the Parties to the  
4 terms of this Amended Protective Order does not preclude the Bankruptcy Court from  
5 imposing sanctions on Insiders if the Court determines that privilege assertions have not been  
6 made in good faith.  
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8 22. This Amended Protective Order may be amended or supplemented from time  
9 to time as is necessary or appropriate.  
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1 STIPULATED and AGREED to this 22<sup>nd</sup> day of August 2007.

2  
3 **DIAMOND MCCARTHY LLP**

4 /s/ Eric D. Madden  
Eric D. Madden  
5 *Special Litigation Counsel for the*  
6 *USACM Liquidating Trust*

**STEPTOE & JOHNSON, LLP**

/s/ Robbin Itkin  
Robbin Itkin  
7  
8 *Counsel for Michael W. Carmel,*  
9 *Chapter 11 Trustee for*  
10 *Thomas A. Hantges*

11  
12 **LEWIS AND ROCA, LLP**

13 /s/ Rob Charles  
Rob Charles  
14 *Counsel for the*  
15 *USACM Liquidating Trust*

**COX SMITH MATTHEWS  
INCORPORATED**

/s/ Deborah D. Williamson  
Deborah D. Williamson  
16 *Counsel for Ford Elsaesser,*  
17 *Chapter 11 Trustee for*  
18 *Joseph D. Milanowski*

19  
20 **ORRICK, HERRINGTON &  
SUTCLIFFE LLP**

21 /s/ Marc A. Levinson  
Marc A. Levinson  
22 *Counsel for Post-Effective Date*  
23 *USA Capital Diversified Trust Deed*  
24 *Fund, LLC*

**GORDON & SILVER LTD.**

25 /s/ Greg E. Garman  
Greg E. Garman  
26 *Counsel for Lisa M. Poulin,*  
*Chapter 11 Trustee for USA Investment*  
*Partners, LLC*